

01129/58503-MDC

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

FILED BY \_\_\_\_\_ D.C.

05 JUN 17 PM 4:40

ROBERT R. DI TROLIO  
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W. D. OF TN JACKSON

LARRY STEVE MELTON, LARRY S. MELTON,  
and R & J OF TENNESSEE, INC.,

Plaintiffs,

vs.

No.: 1-02-1152 B  
JURY DEMANDED

BANK OF LEXINGTON branch of BANK OF FRIENDSHIP,  
TERESA HARRIS, B & H INVESTMENTS, INC., BENNIE  
FESMIRE, DIANE TUCKER, HAROLD WALDEN  
BLANKENSHIP, DEAN BLANKENSHIP, FRANKIE  
STANFILL, KEVIN CARTER, The law firm of MILAM,  
CARTER & STANFILL, REGINA MILLER, TODD  
HENDERSON, WILLIAM WILHITE, DAVID RIDDICK,  
The law firm of HOLMES, RICH, SIGLER & RIDDICK,  
DON WEBSTER, JIMMY BARBOUR, WALDON GWINN,  
JAMES PUTNAM, TIM PILKINGTON, JAMES E. SMITH,  
M. V. WILLIAMS, JR., INVESTMENT MANAGEMENT  
FINANCE, INC., and JOHN DOES I, II, III and IV,

Defendants.

HAROLD WALDEN BLANKENSHIP,

Defendant/Third Party Plaintiff,

vs.

JOHN MELTON, HOWARD DOUGLASS, AMERICAN  
HOME FINANCIAL SERVICES, INC., AMERICAN  
HOME FINANCIAL SERVICES II, INC., BLANKENSHIP/  
MELTON AVIATION, INC., LARRY STEVE MELTON,  
LARRY S. MELTON, R & J OF TENNESSEE, INC.,  
BANK OF LEXINGTON, BRANCH OF FRIENDSHIP,

Third Party Defendants.

This document entered on the docket sheet in compliance  
with Rule 58 and/or 79 (a) FRCP on 6/20/05

601

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LARRY S. MELTON, )  
)  
Plaintiff/Third Party Defendant/ )  
Third Party Plaintiff, )  
)  
vs. )  
)  
BRADLEY KIRK, CARTER, STANFILL & KIRK, PLLC, )  
DANIEL PERKY, SHIRLEY BLANKENSHIP, KELLY W. )  
BLANKENSHIP, BLANKENSHIP CONSTRUCTION, LLC., )  
BLANKENSHIP/MELTON REAL ESTATE, INC., BETH )  
MALOAN, JENNIFER AZBILL, JACK HOLMES, PAUL )  
PRIDDY, MICKEY GRANGER, DENNIS HUBBARD, )  
K.C. ARNETT, RICHARD McCORMICK, BLANKENSHIP )  
BROTHERS' CONSTRUCTION COMPANY, CITY OF )  
LEXINGTON, KEVIN CARTER, FRANKIE STANFILL, )  
HAROLD WALDEN BLANKENSHIP, DEAN )  
BLANKENSHIP, REGINA MILLER, WILLIAM WILHITE, )  
DAVID RIDDICK, JIMMY BARBOUR, WALDON GWINN, )  
JAMES PUTNAM, TIM PILKINGTON, JAMES E. SMITH, )  
M. V. WILLIAMS, JR., BANK OF LEXINGTON, Branch of )  
BANK OF FRIENDSHIP, B & H INVESTMENTS, INC., )  
BENNIE FESMIRE, DIANE TUCKER, and JOHN DOE I, )  
)  
Third Party Defendants. )

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**ORDER DISMISSING LARRY S. MELTON'S COUNTER CLAIMS/CROSS-CLAIMS  
AGAINST THE CITY OF LEXINGTON, TENNESSEE**

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This matter came before this Court on May 27, 2005, upon Third-Party Defendant City of Lexington, Tennessee's Motion to Dismiss Plaintiff/Third-Party Plaintiff's claims against the City of Lexington.

Upon review of the parties' pleadings and responses, this Court finds as follows:

1. That the City of Lexington is immune from suit in the federal courts under the Tennessee Governmental Tort Liability Act (the "TGTLA"), codified at Tenn. Code Ann.

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§29-20-101 et seq., and that this Court therefore lacks subject matter jurisdiction over Plaintiff's tort claims against the City of Lexington under Tenn. Code Ann. § 29-20-307. See *Cunningham v. Reid*, 337 F.Supp.2d 1064 (W.D. Tenn. 2004); *Fromuth v. Metropolitan Government of Nashville*, 158 F. Supp.2d 787 (M.D. Tenn. 2001). Alternatively this court declines to exercise supplemental jurisdiction over these claims. See *Gregory v. Shelby County*, 220 F.3d 433 (6<sup>th</sup> Cir. 2000); see also *Maxwell v. Conn*, 1990 WL 2774 (6<sup>th</sup> Cir. 1990); *Spurlock v. Whitley*, 971 F.Supp.1166 (M.D. Tenn. 1997).

2. That there is no sufficient basis for Plaintiff's claims that the City of Lexington violated his civil rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution.

3. That Plaintiff's claims against the City of Lexington under the TGTLA were not raised until October 12, 2004, outside of the twelve (12) statute of limitation/repose set forth in the TGTLA, and are therefore time-barred under Tenn. Code Ann. § 29-20-305(b).

4. That the City of Lexington is immune from suit in federal courts for Plaintiff's allegations of defamation under Tenn. Code Ann. § 29-20-205(2).

5. That Plaintiff has failed to allege sufficient, non-conclusory facts of the City of Lexington's involvement in any civil conspiracy against him.

6. That the City of Lexington is immune from suit in federal courts for Plaintiff's allegations of violations of the Truth-In-Lending Act. See *Mitchell v. Major Federal Savings & Loan*, 687 F.Supp. 1164 (S.D. Ohio 1987).

7. That Plaintiff's allegations against the City of Lexington do not allege activity involving the City of Lexington, Tennessee, and the other Defendants sufficient to establish

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"ongoing, coordinated behavior among the defendants that would constitute an association in fact," an essential element for a RICO claim. Therefore, Plaintiff's RICO claims must be dismissed.

8. That Plaintiff's claims show no fiduciary relationship between the City of Lexington and the Plaintiff sufficient to establish a breach of fiduciary duty by the City of Lexington.

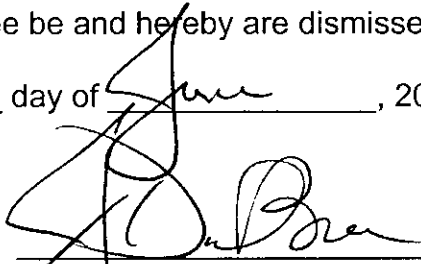
9. That Plaintiff's claims show no indication of a business transaction between the Plaintiff and the City of Lexington nor any fraudulent or deceptive practice by the City of Lexington sufficient to establish a violation of the Tennessee Consumer Protection Act, and that any such allegations fall outside the five (5) year statute of repose under the Tennessee Consumer Protection Act, codified at Tenn. Code Ann. § 47-18-110.

10. That Plaintiff's claims fail to show any exercise or control by the City of Lexington over Plaintiff's assets sufficient to sustain the Plaintiff's allegations of conversion.

11. That the facts fail to indicate any contract between the Plaintiff and the City of Lexington sufficient to establish Plaintiff's allegations of breach of contract or procurement of a breach of contract.

It is therefore ORDERED that Third-Party Defendant City of Lexington's Motion to Dismiss be granted and that all claims by Plaintiff/Third-Party Plaintiff Larry S. Melton against the City of Lexington, Tennessee be and hereby are dismissed.

IT IS SO ORDERED this 17<sup>th</sup> day of June, 2005.

  
\_\_\_\_\_  
J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE

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APPROVED FOR ENTRY:

RAINEY, KIZER, REVIERE & BELL, PLC

By: 

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of this pleading or document was served upon counsel for each of the parties by mailing postage prepaid or by delivery to the person or office of such counsel.

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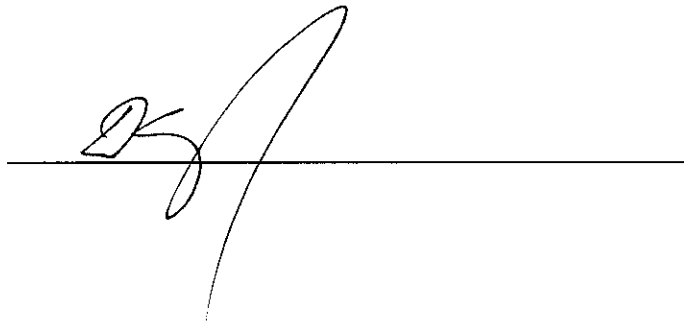
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This the 13<sup>th</sup> day of June, 2005.

A handwritten signature, appearing to be "D. J. [unclear]", is written over a horizontal line. The signature is in black ink and is somewhat stylized.



## Notice of Distribution

This notice confirms a copy of the document docketed as number 601 in case 1:02-CV-01152 was distributed by fax, mail, or direct printing on June 20, 2005 to the parties listed.

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